Supreme Court, U.S.
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

SYLVIA E. McRAE, Petitioner

v.

SAMUEL L. EVANS, III, Respondent

On Petition For Writ Of Certiorari To
The United States Court Of Appeals
For The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Does the United States Supreme Court and/or the Court of Appeals have judicial supervisory power over attorney falsification of evidence in court proceedings which have been removed to federal court?

II. After the United States Supreme Court's decision in Marshall v. Marshall, 547 U.S. 293, 126 S.Ct. 1735, 164 L.Ed.2d 480 (2006), setting probate guidelines, can federal jurisdiction be denied by the probate exception doctrine when those guidelines are observed?

PARTIES TO PROCEEDINGS BELOW

The parties to the proceedings below are Sylvia E. McRae, 829 Roberts Avenue, Drexel Hill, PA 19026, and Samuel L. Evans, III, 1105 Southgate Drive, Charleston, SC 29407.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The petitioner, Sylvia E. McRae, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered in this proceeding on December 19, 2008.

OPINION BELOW

The unpublished opinion of the Court of Appeals appears in the Appendix. The opinions of the United States District Court for the District of South Carolina at Charleston are also set out in the Appendix.

JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was entered on December 19, 2008. A timely petition for rehearing and rehearing en banc was denied on February 3, 2009, and this petition for certiorari was filed within 90 days of that date. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1254(1), 1331, 1332(a)(1) and 1340. The Court also has jurisdiction pursuant to the Fourteenth Amendment to the United States Constitution.

STATUTES INVOLVED

The text of 28 U.S.C. §§ 1331, 1332(a)(1) and 1340 is set out in the Appendix, as is the Fourteenth Amendment to the United States Constitution and the text of 18 U.S.C. § 1506.

STATEMENT OF THE CASE

The parents of the petitioner, Sylvia ("petitioner" or "Sylvia"), and respondent, Sam III ("respondent" or "Sam III"), died a little more than a month apart in the spring of 2001. Their father, Samuel Evans, Jr., left his estate to his wife, Gladys. Sam III administered his estate upon Sylvia's relinquishing of that responsibility due to exposure to tuberculosis. However, she was able to assume the responsibility of administering her mother's estate since the incubation time had passed.

Sylvia and Sam III's mother left a will disposing of her property to Sam III and to her granddaughters, Anne and Mary. Her handwritten intentions were simple, but the will drafted and signed on December 5, 1994 was complex in order to achieve her desire of making certain Sam III would never be destitute. The drafter of her will testified in a deposition that "she wanted to make sure he was taken care of."

Sam III wanted to be the only heir to his mother's estate and filed a lawsuit, removing the estate to the court of common pleas, in order to substitute an old holographic will for the will which had been accepted for probate. About a year and a half

later, he consented to the dismissal of the lawsuit.

The Estate of Gladys R. Evans qualified for an IRS audit. Upon termination of the audit after the distribution of the father's estate, in December 2004, Sam III immediately petitioned to have the testamentary trust specified in the will changed as to trustee and to eliminate restrictions on the trust. The probate court denied that request. But upon resubmission of the request, the Court did approve modification to the will to permit an elderly, ill cousin to assume trusteeship with no restrictions.

The appeal of the modification of the trust went forward to the United States Supreme Court, No. 07-1519; certiorari was denied on October 6, 2008, and the petition for rehearing was denied on December 1, 2008.

While the appeal was in the courts, the Probate Court issued three Orders on June 12, 2007, charging petitioner with attorney's fees, ordering return of the IRS-approved executrix fee, and relieving petitioner as personal representative of the estate. These orders form the basis for Sylvia's legal defense of herself individually and as personal representative in the South Carolina Court of Common Pleas, the Federal District Court, and the Court of Appeals for the Fourth Circuit.

SUMMARY OF ARGUMENT

The action that forms the basis for this petition began with the Orders issued on June 12, 2007, but then grew, without proper legal supervision, into a larger issue: must counsel misrepresentation of

evidence in a court hearing destroy the petition which gave rise to those Orders. The denial by the District Court that the removal had subject matter jurisdiction and the assertion by that Court of Appeals that a remand was not reviewable pale before the information that falsification of evidence occurred.

However, the district court, even without knowledge of the judicial breach of ethics, did not consider the testatrix' rights under 14th Amendment, nor the exception to 28 U.S.C. § 1447(d) at 28 U.S.C. § 1443, which permit her to select her representatives unfettered by state courts.

Moreover, the lower courts did not consider the narrowed parameters of the probate exception doctrine with the decision in Marshall v. Marshall, 547 U.S. 293, 126 S.Ct. 1735, 164 L.Ed.2d 480 (2006). At that time, in a concurring opinion, it invalidated the Rooker-Feldman doctrine. Here, the magistrate judge ignored the Marshall decision as though it had not occurred; the district court judge said it was inapplicable. However, many other federal and district courts have used the Marshall decision as a guideline. The district court here chose not to do so, and the appellate court affirmed that choice by not permitting review of the remand. These courts are in conflict with the U. S. Supreme Court and with other circuit courts.

There was already a federal presence in the will administration that was not considered by the federal courts. The estate had been under IRS audit and federal, as well as state, taxes were paid. The probate of the estate could not go forward until the IRS concluded the audit and issued a closing letter. As

soon as the closing letter was received, the estate administration was attacked for paying taxes by the promotion of a disclaimer scheme for avoidance of all taxes. If an estate is taxed, federal jurisdiction is valid. However, here the federal courts did not give credence to this fact.

Diversity of parties statutorily permits citizens of different states to bring disputes to a federal forum. The within case involves parties from different states: the decedent resided in South Carolina, the executrix resides in Pennsylvania, the major beneficiary resides in South Carolina, another beneficiary resides in Ohio and another resides in Massachusetts. The monetary amount involved is the executrix fee of $45,000.00 and the attorney's fees of $34,227.37 for a petition and two hearings on that petition. The requirements for federal jurisdiction under 28 U.S.C. § 1332(a)(1) were met. However, federal jurisdiction was not granted and the Rooker-Feldman doctrine was cited as a reason, a doctrine that had been made obsolete by this Court.

Because of these reasons, there is federal jurisdiction in this case. Because there was a violation of 18 U.S.C. § 1506, the supervisory power of the Court is invoked. It is respectfully requested that this Court reverse the Fourth Circuit Court of Appeals and permit the decedent's will to stand and the petition of the offending counsel ordered to fail.

ARGUMENT

I. THE NOTIFICATION TO THE COURT OF APPEALS OF THE FOURTH CIRCUIT

THAT FALSIFICATION OF EVIDENCE OCCURRED IN A LOWER COURT SHOULD HAVE PROMPTED A REVIEW OF THE REMAND TO THAT LOWER COURT.

A. The Effect Of Falsification Of Evidence Before The Court.

There were two hearings scheduled for the Court of Common Pleas on February 7, 2008. One related to the testamentary trust and a petition for writ of certiorari had been submitted to the Supreme Court on that matter, No. 05-5018. The other hearing related to the appeal of the three recent orders of the probate court, No. 07-2527. Upon a request for a continuance to permit attendance at a family member's Air Force promotion ceremony in Ohio on February 5, 2009, and the kindness of the Honorable R. Markley Dennis, the hearings were continued. The hearing in No. 05-5018 was rescheduled for April 14, 2008. Since that case involved the testamentary trust modification and was in the federal courts, petitioner attempted to have it continued, but opposing counsel, Robert Kunes and Andrew Chandler, would not agree to a continuance.

At that hearing, the counsel, Messrs. Kunes and Chandler, misrepresented evidence to the court in an attempt to "bait and switch" case No. 05-5018 and case No. 07-2527. They asserted that the appeal had been initiated pro se and that they had filed a motion to dismiss. Petitioner protested, the court could not find a motion to dismiss in the case file, and the hearing was dismissed. See Appendix 20.

The next month, on May 21, 2008, a hearing on case No. 07-2527 (a predecessor of the within case) was held and Messrs. Kunes and Chandler handily prevailed. Petitioner promptly removed the case to the federal court on grounds of diversity, civil rights of testatrix, and federal tax jurisdiction.

But, petitioner also reported the misrepresentation at the court of common pleas hearing, and the action of the nominee of the probate court for special administrator of the estate, Stephen Slotchiver, in misrepresenting his status to the probate court to the Office of the Disciplinary Counsel. On November 19-20, 2008, that agency opened an investigation into the actions of Messrs. Kunes and Chandler, but not on Mr. Slotchiver (who did not attend the hearings). Upon realization of the seriousness of the attorneys' misrepresentations, the petitioner reported the actions to the Fourth Circuit Court of Appeals in a Motion for Rehearing and/or Motion for Rehearing En Banc. The appellate court ignored the misrepresentations without explanation. The petitioner made a judicial complaint about the lack of attention to a serious breach in the judicial process on March 9, 2009; a week later, by letter dated March 13, 2009, petitioner was notified that the agency was dismissing the case against Messrs. Kunes and Chandler. However, it should be noted that a court reporter was at the hearing and their actions are a matter of public record.

The judicial complaint also included the actions of the probate judge who, while this appeal was in progress, ordered the transfer of all estate funds to Mr. Slotchiver. See Appendix 9. The estate and trust

accounts at Wachovia Bank, totaling $67,426.21, have been seized and commingled into one commercial account in Mr. Slotchiver's name. The estate account contained funds to pay federal and state income taxes, as well as local property taxes and insurance on the house where respondent resides (his parents' home).

The falsification of evidence (18 U.S.C. § 1506) of Messrs. Kunes and Chandler on April 14, 2008, should nullify the probate court orders made upon their request and which constitute the basis for this petition for writ of certiorari. Their actions of misrepresentation were extremely serious, much more so than the complaints they made to probate court that petitioner did not use disclaimers to evade estate taxes. The purpose of the federal perjury statute is to keep the courts free from pollution of perjury. 18 U.S.C. § 1623(a). See United States v. McComb, 744 F.2d 555 (7th Cir. 1984) (the falsification of evidence with a corrupt intent is an endeavor to obstruct justice.) Also, in United States v. Rasheed, 663 F.2d 843, 9 Fed. R. Evid Serv. 360 (9th Cir. 1981), the court holds at 852, "We have observed that the obstruction of justice statute was designed to proscribe all manner of corrupt methods of obstructing justice...Black's Law Dictionary defines 'corruptly' to mean with a 'wrongful design to acquire some pecuniary or other advantage.'"

Section 19 of 58 Am. Jur. 2d states:

> Endeavors to destroy or conceal evidence are proscribed as obstructions of justice. Acts that distort evidence to be presented or otherwise impede the administration of justice are violations of the federal obstruction of justice statute and the act

> of altering or fabricating documents used or to be used in a judicial proceeding falls within the statute if the intent is to deceive the court.

And the states agree, for South Carolina has a stringent code against perjury. South Carolina Code 1976 § 16-9-10. See State v. Stanley, 615 S.E. 2d 455, S.C. App (2005) (Giving false testimony at trial constitutes the felony of "perjury" and subjects the perjurer to a fine and/or up to 5 years imprisonment.)

While the erroneous statement made by Messrs. Kunes and Chandler before the court that the appeal was brought "pro se" does not signify harm in the federal courts, in South Carolina it can be fatal to an appeal since a personal representative cannot defend an estate without legal representation. See Brown v. Coe, 365 S.C. 664, 620 S.E.2d 323 (2005).

Moreover, the damage caused by the actions of Messrs. Kunes and Chandler was to the judicial system. In the opinion of Justice Thomas in Bridge v. Phoenix Bond & Indemnity Co., 128 S.Ct. 2131 (2008) FN6, "Of course, a misrepresentation can cause harm only if a recipient of the misrepresentation relies on it. But that does not mean that the only injuries proximately caused by the misrepresentation are those suffered by the recipient." Further, Justice Thomas in Bridge at 2138 says, "The gravamen of the offense is the scheme to defraud...." and at 2143 states: "There is no general common-law principle holding that a fraudulent misrepresentation can cause legal injury only to those who rely on it."

The Fourth Circuit Court of Appeals should not have ignored the information about the seriousness of

the falsification in a court. In Bell v. Thompson, 545 U.S. 794, 125 S.Ct. 2825 (2005), Justice Kennedy states at 805: "'Basic to the operation of the judicial system is the principle that a court speaks through its judgments and orders.' Murdaugh Volkswagen, Inc., v. First National Bank of South Carolina, 741 F.2d 41, 44 (C.A.4, 1984)."

The Petition for Writ of Certiorari in Anderson v. Beatrice Foods Co., No. 90-198, 1990 WL 10058742 (U.S.), at *16, eloquently stated: "To complacently tolerate this fraud is inconsistent with the good order of the civil justice system and society. See, Rule 10 of the United States Supreme Court; Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 246 (1944)."

Here, it was the act of falsification must doom the petition of Messrs. Kunes and Chandler. The Supreme Court should reverse the judgment of the Fourth Circuit Court of Appeals and no reward should be granted for felonious acts. Rule 60(b), Federal Rules of Civil Procedure.

B. The Supervisory Power Of The Courts.

In United States of America v. Leslie, 759 F.2d 366 (Rehearing En Banc Granted May 14, 1985) at 370-71, the appellate court discussed the Supreme Court's exercise of its supervisory power in the federal court system:

> The so-called supervisory power doctrine was articulated formally over four decades ago in *McNabb v. United States*, 318 U.S. 332, 63 S.Ct. 608, 87 L.Ed 819 (1943) [footnote omitted], and has been

> interpreted to permit federal courts [footnote omitted] to formulate procedural rules not specifically required by the Constitution or federal statutes. *United States v. Hasting*, 461 U.S. 499, 505, 103 S.Ct. 1974, 1978, 76 L.Ed.2d 96 (1983).

Also, in Leslie at 371, Judge Williams wrote:

> "Initially, the Court recognized that: while the power of [the] Court to undo convictions in state courts is limited to the enforcement of those 'fundamental principles of liberty and justice'...which are secured by the Fourteenth Amendment, the scope of [the Court's] reviewing power over convictions brought...from the federal courts is not confined to ascertainment of Constitutional validity."

Judge Williams continues and cites McNabb: "....the Court announced the duty of courts 'as agencies of justice and custodians of liberty' to preserve the integrity of the judicial process...."

Earlier, in Ker v. State of California, 374 U.S. 23, 83 S.Ct. 1623 (1963), Justice Clark wrote at 33-34:

> As we have stated above and in other cases involving federal constitutional rights, findings of state courts are by no means insulated against examination here. See, e.g., Spano v. New York, 360 U.S. 315, 316, 79 S.Ct. 1202, 1203, 3 L.Ed.2d 1265 (1959); Thomas v. Arizona, 356 U.S. 390, 393, 78 S.Ct. 885, 887, 2

L.Ed.2d 863 (1958); Pierre v. Louisiana, 306 U.S. 354, 358, 59 S.Ct. 536, 538-539, 83 L.Ed. 757 (1939).

Here, because this petition is brought under the Fourteenth Amendment, the falsification of evidence in this case and the appellate court's acceptance of that act should not be insulated from review.

II. THE SUPREME COURT IN MARSHALL NARROWED PROBATE EXCEPTION AND DEFINED A PROBATE COURT'S FUNCTION AS DETERMINING A VALID WILL AND ADMINISTERING A VALID WILL.

Here, the Probate Court exceeded its authority in issuing the Orders of June 12, 2007, which set in place a special administrator, later redefined as special fiduciary (See Appendix 9), ordered payment of attorneys' fees by the petitioner who is defending the will, and ordered the return of the IRS-approved executrix fee. Also, by that later order dated February 12, 2009, the probate court permitted the special fiduciary to take control of estate funds, and without limits to commingle funds from two separate accounts that require close continuing monitoring to avoid contamination of data.

The appeals of these probate court orders should be heard in a higher court. Because of the diversity of citizenship of the parties and the monetary amount involved, the court should be a federal court. 28 U.S.C. § 1332(a)(1). Because of the federal tax implication in the appeals, the court should be a federal court. 28 U.S.C. § 1340. U.S. Constitution, Art. VI, Cl.2.

Because attorneys' fees are not charged in defense of the will under the Uniform Probate Code, the appeal of that order should be in a federal court. See Uniform Probate Code 3-720 (Appendix 24). Because of the probate court's change of testatrix' representatives, thereby denying her 14th Amendment rights, the challenge should be in a federal court. See 14th Amendment (Appendix 22); see also, Reed v. Reed, 404 U.S. 71, 92 S.Ct. 251 (1971). But these federal implications were not considered by the federal courts here. Moreover, the magistrate court in its judgment did not mention Marshall and remanded to state court, and the district court found it inapplicable and also remanded.

The Fourth Circuit Court of Appeals found the remand order non-reviewable. However, that court did not consider 28 U.S.C. § 1447(d) and 28 U.S.C. § 1443 which guarantees the testatrix' right to select a representative.

Article III, § 2, of the Constitution granted a right of judicial diversity consideration to citizens of different states. Then the diversity statute, 28 U.S.C. 1332(a)(1), added a monetary restriction to that right. Then the probate exception, a judicial doctrine, attempts to destroy the right. See Peter Nicolas, "Fighting the Probate Mafia: A Dissection of the Probate Exception to Federal Court Jurisdiction," 74 S. Cal. L. Rev. 1479, 1482. ([Probate exception] has the effect of excluding most probate and probate-related matters from federal court and has been aptly described as "one of the most mysterious and esoteric branches of the law of federal jurisdiction.") Justice Ginsberg, limiting probate exception in her opinion in

Marshall, at 1746 referred to Peter Nicolas' treatise.

Further in Nicolas' treatise, at 1480, the description of the reason for filing in federal court is apt here: "While the probate proceedings are still pending, the daughter files suit against the car dealer and the attorneys in federal district court, in part because she perceives that the probate court judge's actions indicate open hostility toward her, as a resident of another state, and toward her attorneys."

Close to point here is In re In the Matter of the Estate of John Henry Kendricks; Bonnie Thomas, et al., individuals, Plaintiffs, v. Artists Rights Enforcement Corp., et al., Defendants, 572 F. Supp.2d 1194 (Aug. 19, 2008), where the district court held that (1) petition qualified as civil action within meaning of federal removal statute and (2) probate exception did not bar removal. As to probate exception, the court at 1197-1198 stated:

> In Marshall, the Supreme Court restricted the scope of the exception, holding that it "reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is not in the custody of a state probate court"...Federal courts have jurisdiction over "matters outside those confines and otherwise within federal jurisdiction"...A federal court "will not take jurisdiction if it should not; but it is equally true, that it must take jurisdiction, if it should."

(citations omitted.)

Further, at 1198, the court in Kendricks referred to Campi v. Chirco Trust UDT, 223 Fed.Appx. 584, 585 (9th Cir. 2007), stating: "Thus, the plaintiff's attempt to bring the property back into the estate for distribution to the heirs indicated that the property was not in the custody of the probate court." Here the attempt is to bring the personal representative fee back into the court and to have the personal representative pay attorney's fees submitted to the estate. As in Kendricks, the judgment sought here is in personam, and as in Kendricks, the removal to federal court should be permitted and remand should be denied.

III. FEDERAL TAX MATTERS ARE IN FEDERAL COURT.

The probate court here affected the collection of appropriate federal estate taxes by nullifying deductions approved by the IRS in its audit. Changes that affect the audit must be reported to the IRS. However, under the Supremacy Clause, U.S. Const. Art. VI, Cl. 2, if there is any conflict between federal and state law, federal law shall prevail.

In Commissioner v. Estate of Bosch, 387 U.S. 456, 457 (1967), the court held that "where the federal estate tax liability turns upon the character of a property interest held and transferred by the decedent under state law, federal authorities are not bound by the determination made of such property interest by a state trial court."

In Williams v. U.S., 327 F.Supp.2d 720, 722

(S.D.Tex., 2004), the court granted the United States summary judgment in its efforts to collect estate taxes and in the discussion of jurisdiction stated:

> The Government asserts that this Court has jurisdiction under 26 U.S.C. § 7402(a) ("The district courts ... shall have such jurisdiction ... to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws."), 28 U.S.C. § 1340 ("The district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue, ...")

Although the magistrate court here did not interpret 28 U.S.C. § 1442 beyond the title, the statute does relate to the effect the state court's ruling has on the estate's federal tax. Reading the statute at (a):

> A civil action ... commenced in a State court against any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending: (2) A property holder whose title is derived from any such officer, where such action or prosecution affects the validity of any law of the United States.

Here the counsel, Messrs. Kunes and Chandler, who brought this action to nullify the executrix fee, had wanted no estate federal tax paid and hired an expert to testify in a hearing that, through disclaimers, federal estate tax could have been avoided. These

attorneys began this civil action by petition/hearing in probate court against the executrix fee which was approved by the IRS agent performing the estate audit. The petitioner's executrix fee was derived from the approval of the IRS agent and the action affects the audit of the federal estate tax, a law of the United States. The statute is relevant to federal tax consideration in this action.

IV. A STATE COURT CANNOT USURP AUTHORITY.

Here the probate court initially ordered attorneys' fees for the challenge of the estate/will to be paid from the estate. Then, here, the probate court ordered those fees to be paid personally by the executrix. South Carolina subscribes to the Uniform Probate Code, as several states do, and that Code at 3-720 holds that: "If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorneys' fees incurred."

James E. Chellis wrote in "How to Administer Trusts and Estates to Anticipate and Avoid Litigation," 33931 NBI-CLE 37, at p. 34, FN9:

> See, Exparte McLeod, 323 S.C. 461, 476 S.E.2d 167 (Ct. App. 1996). In this case, the lack of the Probate Court's subject matter jurisdiction resulted in a successful challenge by the Personal Representative of attorneys fees claimed

in the settlement of a wrongful death action. The Court of Appeals held that the probate court did not have subject matter jurisdiction to award attorney fees absent petition to approve settlement offer.

But more authoritatively, in Markham v. Allen, 326 U.S. 490, 66 S.Ct. 296, 299, 90 L.Ed. 256 (1946), the Supreme Court held: "The mere fact that the district court, in the exercise of the jurisdiction which Congress has conferred upon it, is required to interpret state law is not in itself a sufficient reason for withholding relief to petitioner. Meredith v. Winter Haven, 320 U.S. 228, 64 S.Ct.7."

The probate court does not have the statutory authority to charge a personal representative attorney's fees for defending a will.

V. THE FOURTEENTH AMENDMENT GUARANTEES THE RIGHT TO SELECT REPRESENTATIVES.

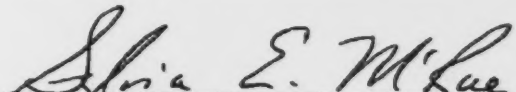
The testatrix in her will named a personal representative and a substitute personal representative. The personal representative has administered the estate according to the will and the federal laws of taxation and has defended the will. The substitute personal representative has a MBA degree and extensive business experience. However, the probate court here has released one and ignored the other. The state court cannot deny testatrix the right, under the 14th Amendment, to select her representatives. In Reed v. Reed, 404 U.S. 71, 92

S.Ct. 251 (1971), Chief Justice Burger ruling in this probate related matter determined at 253-4 that: "The Equal Protection Clause of that [14th] amendment does, however, deny to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute." Discrimination by laws or judicial rulings cannot exist in America.

CONCLUSION

For the foregoing reasons, petitioner respectfully submits that the petition for writ of certiorari be granted to review the judgment of the Fourth Circuit Court of Appeals.

Respectfully submitted,



Sylvia E. McRae
Petitioner, pro se
829 Roberts Avenue
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(610) 449-9674 home
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APPENDIX

FILED: February 3, 2009

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-2010
(2:08-cv-01957-CWH)

SYLVIA E. MCRAE,

Plaintiff - Appellant

v.

SAMUEL L. EVANS, III,

Defendant - Appellee

ORDER

The Court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wilkinson, Judge Michael, and Judge King.

For the Court
/s/ Patricia S. Connor, Clerk

FILED: December 19, 2008

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-2010
(2:08-cv-01957-CWH)

SYLVIA E. MCRAE,

Plaintiff - Appellant

v.

SAMUEL L. EVANS, III,

Defendant - Appellee

J U D G M E N T

In accordance with the decision of this Court, this appeal is dismissed.

This judgment shall take effect upon issuance of this Court's mandate in accordance with Fed. R. App. P. 41.

/s/ Patricia S. Connor, Clerk

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-2010

SYLVIA E. MCRAE,

Plaintiff - Appellant,

versus

SAMUEL L. EVANS, III,

Defendant - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Charleston. C. Weston Houck, Senior District Judge. (2:08-cv-01957-CWH)

Submitted: December 16, 2008
Decided: December 19, 2008

Before WILKINSON, MICHAEL, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Sylvia E. McRae, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Sylvia E. McRae appeals the district court's orders remanding her case to the South Carolina state court. Generally, "[a]n order remanding a case to the state court from which it was removed is not reviewable on appeal or otherwise." 28 U.S.C.A. § 1447(d) (West 2006). Although this section could be read expansively to apply to all remand orders, the Supreme Court has held that it must be read in conjunction with 28 U.S.C.A § 1447(c) (West 2006). Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 711-12 (1996).

Because the remand order is based on a lack of subject matter jurisdiction, it falls within the scope of 1447(c) and is therefore not reviewable. See 28 U.S.C.A. § 1447(c) ("If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded."); Ellenburg v. Spartan Motors Chassis, Inc., 519 F.3d 192, 196 (4th. Cir. 2008) (holding that a remand order based on lack of subject matter jurisdiction, whether sua sponte or not, falls under § 1447(c) and is not reviewable).

Accordingly, we dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Sylvia E. McRae,	)	
	)	
Appellant,	)	2:08-1957-CWH
	)	
vs.	)	
	)	
Samuel L. Evans, III	)	**ORDER**
	)	
Respondent.	)	
	)	

On May 21, 2008, the appellant removed her pro se appeal in the Court of Common Pleas for Charleston County to this court.[1]

[1] The appellant filed a similar action in this court almost two years ago. On October 30, 2006, the appellant filed a notice of removal of her appeal from the Court of Common Pleas for Charleston County to this court. The appellant alleged that the Probate Court of Charleston County wrongfully removed her from her position as trustee of a testamentary trust. On November 15, 2006, Magistrate Judge Carr remanded this case for lack of jurisdiction to the South Carolina Court of Common Pleas for Charleston County from which it was removed. On November 27, 2006, the plaintiff appealed to this court from Magistrate Judge Carr's order. On April 25, 2007, the Court affirmed Magistrate Judge Carr's order and remanded the case to the Court of Common Pleas of Charleston County. On May 14, 2007, the appellant filed a motion for reconsideration. On May 15, 2007, the Court denied the motion. On May 21, 2007, the appellant

appealed to the Fourth Circuit Court of Appeals. On November 19, 2007, the Fourth Circuit Court of Appeals affirmed the Court's decision. On January 10, 2008, the Fourth Circuit Court of Appeals denied the appellant's petition for a rehearing and rehearing en banc. On January 22, 2008, judgment was entered.

The appellant contends that she should be the Personal Representative of an estate. On June 5, 2008, Magistrate Judge Robert S. Carr ("Magistrate Judge Carr") remanded this action due to lack of jurisdiction. On June 6, 2008, the appellant appealed magistrate Judge Carr's decision to this Court.

This Court has no appellate jurisdiction over the South Carolina courts and cannot review their decisions except to the limited extent it is so authorized in cases in which prisoners seek writs of habeas corpus. Rooker v. Fidelity Trust Co., 263 U.S. 413, 415 (1923): 28 U.S.C. §2241. Therefore, this Court lacks subject matter jurisdiction to review the state court decisions that the appellant wishes to appeal.

The appellant argues that this Court has jurisdiction pursuant to Marshall v. Marshall, 547 U.S. 293, 308-09 (2006). Federal jurisdiction is subject to a probate exception which proscribes federal courts from disposing of property in the custody of a state probate court. Id. In Marshall, the plaintiff brought an adversary proceeding in her Chapter 11 bankruptcy case. The plaintiff alleged "a widely recognized tort" when she claimed that her stepson tortiously interfered with her interest in her husband's estate. Id. The Supreme Court held that the probate exception did not apply because the plaintiff did not

seek the res in the custody of a state court. Id. Marshall is inapplicable here. In this case, the appellant appeals the probate court's decision and seeks to be reinstated as a personal representative. For the reasons stated above, the Court is without jurisdiction to dispose of the appellant's claim.

The Court affirms Magistrate Judge Carr's decision. Because the Court lacks jurisdiction, the appellant's case is remanded to the Court of Common Pleas for Charleston County from which it was removed.

AND IT IS SO ORDERED.

/s/
C. WESTON HOUCK
UNITED STATES DISTRICT JUDGE

August 12, 2008
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE PROBATE COURT
CASE NO.: 2001-ES-10-0951

In re:)
)
ESTATE OF GLADYS RUTH EVANS)
Deceased.)
)

ORDER FOR THE APPOINTMENT OF A SPECIAL FIDUCIARY

A Petition was filed by Stephen Slotchiver, in his capacity as the Special Administrator of the Estate of Gladys Ruth Evans, for clarification of the authority of the Special Administrator, or, in the alternative, for the appointment of a Special Fiduciary.

On June 12, 2007 the Charleston County Probate Court issued an Order restraining and removing Sylvia E. McRae as the Personal Representative of the Estate of Gladys Ruth Evans and appointed Stephen M. Slotchiver as the Special Administrator of the Estate of Gladys Ruth Evans.

The Order removing Sylvia E. McRae and appointing Stephen M. Slotchiver as the Special Administrator was appealed by Sylvia E. McRae. This Order was subsequently heard by the Court of Common Pleas and an Order was issued on May 28, 2008 wherein the Honorable Judge Thomas L.

Hughston, Jr. affirmed the Probate Court's Order in its entirety.

Sylvia E. McRae appealed the Order of the Honorable Judge Hughston affirming the Charleston County Probate Court's Orders to the Federal District Court for South Carolina, rather than the South Carolina Court of Appeals. Although the Appeal to the federal courts has resulted in a dismissal for lack of jurisdiction (without hearing), Sylvia E. McRae has filed an Appeal of the Dismissal. The federal Appeal is in the Fourth Circuit Court of Appeals, which is still pending.

In order to protect the interests of the Estate, this Court believes that additional protective action is warranted. I find that sufficient evidence has been previously established in this Court's record through testimony and exhibits that Sylvia E. McRae failed to properly administer the Estate of Gladys Ruth Evans and breached her fiduciary duties as Personal Representative to the Estate of Gladys Ruth Evans.

To protect the interest of the Estate of Gladys Ruth Evans, pursuant to Section 62-3-614, 62-7-704(e), 62-7-706(c), and 62-7-1001(b) of the South Carolina Probate Code and the South Carolina Trust Code, I believe that a special fiduciary of the Estate, with sole, complete, and plenary powers, is necessary for the administration of the Estate, to further the best interests of the Estate and to protect the ultimate beneficiaries of the Estate until such time as Sylvia E. McRae's final determination in the federal courts.

WHEREFORE THIS COURT HEREBY ORDERS that Stephen M. Slotchiver is hereby appointed as a Special Fiduciary of the Estate of

Gladys Ruth Evans, with sole, complete and plenary powers, to handle the administration of the Estate, and to further the best interests of the Estate and to protect the ultimate beneficiaries of the Estate until such time as Sylvia E. McRae's final determination in the Federal Courts.

IT IS FURTHER ORDERED that Stephen M. Slotchiver, as Special Fiduciary shall be entitled to require Sylvia E. McRae to provide him with a list of all current assets of the Estate, as well as an Accounting showing all income earned and/or received by the Estate of Gladys Ruth Evans, and expenses incurred on and/or by the Estate from the date of Sylvia E. McRae's initial appointment as the Personal Representative of the Estate of Gladys Ruth Evans to present.

IT IS FURTHER ORDERED that Stephen M. Slotchiver, as the Special Fiduciary shall be entitled to contact any known banking institutions, brokerage firms, etc., in order to confirm that the assets are in the name of Gladys Ruth Evans, and to have Sylvia E. McRae's name and address removed from the account(s) and his name, as the Special Fiduciary of the Estate, substituted therefore.

/s/
The Honorable Tamara C. Curry
Charleston County Probate Court

Dated: February 12, 2009
Charleston, South Carolina

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Sylvia E. McRae,

Appellant, C/A No.2:08-1957-CWH-RSC

vs. Order for Summary Remand

Samuel L. Evans, III

Appellee.

This case was removed to the United States District Court for the District of South Carolina from state court by Sylvia E. McRae, "Appellant" (hereinafter "McRae"). McRae asserts that she is appearing "individually, and as Personal Representative under the Will fo [sic] Gladys R. Evans." The Notice of Removal alleges this Court has jurisdiction pursuant to the diversity statute, 28 U.S.C. § 1332(a)(1); violation of civil rights, 28 U.S.C. § 1343(a)(3) and 28 U.S.C. § 1443(1); "federal officers or agencies sued or prosecuted," 28 U.S.C. § 1442(a)(2); and "appearance personally or by counsel," 28 U.S.C. § 1654. McRae has previously attempted to remove an appellate state court case originating in the probate court, *McRae v. Evans*, C/A No. 2:06-3075-CWH-RSC (D.S.C.), which was remanded based on lack of jurisdiction. The current case must also be remanded because this Court does not have jurisdiction.

Discussion

This case originated in state court in South Carolina and the "Appellant" filed a Notice of Removal to this United States District Court on May 21, 2008. The statute which governs removal of state court actions to federal court, 28 U.S.C. § 1441(a), provides that:

> Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

A defendant[1] in a state court case may remove that case to a federal district court only if the state court action could have been originally filed in that federal district court. The defendant seeking removal has the burden of establishing federal jurisdiction. *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 97 (1921).

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[1] McRae is not the "defendant" in the state Court of Common Pleas proceedings, but in fact initiated the state court proceedings. [Docket #1-2 at 1]. Based on the clear language of the removal statute, McRae is not a "defendant" that is permitted to procedurally remove a state court case to a federal district court.

The law is well settled that federal courts are courts of limited jurisdiction that possess only that

power authorized by Constitution and statute. *Willy v. Coastal Corp.*, 503 U.S. 131, 136-37 (1992). Because federal courts have limited subject matter jurisdiction, there is no presumption that the court has jurisdiction. *Turner v. Bank of North America,* 4 U.S. (4 Dall.) 8,11 (1799). Because the federal courts have limited jurisdiction and removal jurisdiction raises federalism concerns, a district court must strictly construe the removal statute. *Shamrock Oil & Gas Corp. v. Sheets,* 313 U.S. 100, 108-9 (1941). Strict construction of the removal statute results in any doubts about federal jurisdiction being resolved against removal, with the case being remanded to state court. *Cheshire v. Coca-Cola Bottling Affiliated, Inc.*, 758 F. Supp. 1098, 1102 (D.S.C. 1990).

The Notice of Removal alleges this Court has diversity jurisdiction in this matter. The diversity statute requires complete diversity of parties and an amount in controversy in excess of seventy-five thousand dollars ($75,000.00). 28 U.S.C. § 1332(a). Complete diversity of parties in a case means that no party on one side may be a citizen of the same State as any party on the other side. *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365, 372-74 (1978). Although the parties in this case are citizens of different states, thus meeting the requirement of complete diversity, the "cause of action" presented is an appeal of a probate court proceeding. As explained in McRae's prior case, this Court does not have jurisdiction under the diversity statute if the underlying state action is an appeal in a probate court proceeding. The "probate exception" to diversity jurisdiction, which establishes that federal courts have

no jurisdiction over matters that are exclusively within the jurisdiction of state probate courts, is again applicable in this case. *See Beattie v. J.M. Tull Foundation*, 941 F. Supp. 57 (D.S.C. 1996); *Foster v. Carlin*, 200 F.2d 943 (4th Cir. 1952). The underlying state court proceeding involves the administration of an estate. Similarly, the *Rooker Feldman* doctrine, as explained in McRae's prior case in this Court, precludes the United States District Court for the District of South Carolina from reviewing the findings or rulings made by state courts. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983).

The Notice of Removal also alleges jurisdiction based on violation of civil rights pursuant to 28 U.S.C. § 1343(a)(3) and 28 U.S.C. § 1443(1). In determining proper removal based on federal question, a district court must look to the plaintiff's state court pleading to determine the grounds for removal. "A defendant may not remove a case to federal court unless the *plaintiff's* complaint establishes that the case 'arises under' federal law." *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 10 (1983) (emphasis in original). "In other words, federal question jurisdiction exists 'only when a federal question is presented on the face of the plaintiff's properly pleaded complaint.'" *Mickalis Pawn Shop, LLC v. Bloomberg*, 482 F. Supp.2d 707, 710 (D.S.C. 2007) quoting *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). In this case, the "appellant" in the underlying state court proceeding, the initiating

litigant, filed an "appeal of a probate court order." The "appellant" is not a defendant in the state court case and the "appeal" of probate court orders is not a "complaint." The document filed in state court titled "appeal of probate court order" is not a pleading which could have originally been filed in this federal district court. As explained, the *Rooker-Feldman* doctrine prohibits a federal district court from reviewing a state court order in an appellate capacity. The state court appeal of orders issued by the probate court does not present issues over which the "district courts of the United States have original jurisdiction" that are subject to removal under 28 U.S.C. § 1441(a).

The Notice of Removal also alleges jurisdiction based on 28 U.S.C. § 1442(a)(2), "federal officers or agencies sued or prosecuted." Clearly, the underlying appeal in state court does not involve suit against a federal officer or agency, nor is the "appellant" a federal officer or agency. Title 28 U.S.C. § 1442(a)(2) is irrelevant to this case and McRae cannot establish jurisdiction for this case under this statute.

The final statute alleged in the Notice of Removal to establish jurisdiction in this Court is 28 U.S.C. § 1654, "appearance personally or by counsel." This statute is not a jurisdictional statute, but a procedural law that establishes that a proper party to a lawsuit can represent their own legal interest in a law suit. In the reverse, a person proceeding *pro se*, on their own behalf, may not act as legal representative of the legal interest of any other party.[2]

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[2] Because this case is being remanded to state court for lack of subject matter jurisdiction, it is not necessary for this Court to

address the issue of representation of the estate in this Court.

This statute does not assist McRae in establishing jurisdiction in this case.

McRae fails to carry her burden to establish jurisdiction in this Court under the removal statute. Because this Court lacks subject matter jurisdiction in this case, remand is mandated by 28 U.S.C. § 1447(c): "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." The lack of subject matter jurisdiction may be addressed by the Court *sua sponte* at any time. Thus, in a removed case that lacks subject matter jurisdiction, such as in this case, the order remanding the case may be entered *sua sponte* at any time. *Ellenburg v. Spartan Motors Chasis, Inc.*, __ F.3d__, 2008 WL 624920 (4th Cir. 2008).

Conclusion

Recent, well-reasoned case law from numerous District Courts around the country has indicated that a magistrate judge may enter an order of remand. *See, e.g., Meier v. Premier Wine & Spirits, Inc.*, 371 F. Supp. 2d 239 (E.D. N.Y. 2005); *Johnson v. Wyeth*, 313 F. Supp.2d 1272 (N.D. Ala. 2004) (collecting cases and discussing *Roell v. Withrow*, 538 U.S. 580 (2003)); *Wyatt v. Walt Disney World, Co.*, No. 5:97CV116-V, 1999 WL 33117255 (W.D. N.C., July 26, 1999); *see also Delta Dental of Rhode Island v. Blue Cross & Blue Shield of R.I.*, 942 F. Supp. 740 (D. R.I. 1996); *Vaquillas Ranch Co. v. Texaco Exploration & Prod., Inc.*, 844 F. Supp. 1156, 1160-63 (S.D. Tex. 1994); *Holt v. Tonawanda Coke Corp.*, 802 F. Supp. 866, 868 (W.D. N.Y. 1991); *City of Jackson v. Lakeland Lounge of*

Jackson, Inc., 147 F.R.D. 122, 124 (S.D. Miss. 1993); *McDonough v. Blue Cross of NE Penn.*, 131 F.R.D. 467 (W.D. Pa. 1990); see also *Pikkert v. Pastene*, 2003 WL 21154296 (4th Cir., May 20, 2003), *cert. denied*, 541 U.S. 987 (2004) (unpublished, but finding that a magistrate judge's remand order is not reviewable by the appellate court). Accordingly, the undersigned is entering an Order in this case. This Order can be appealed to a United States District Judge for review "under the clearly erroneous or contrary to law standard." *Vaquillas Ranch Co.*, 844 F. Supp. at 1163, *see* 28 U.S.C. § 636(b)(1)(A); Fed.R.Civ.P. 72(a); *Johnson v. Wyeth*, 313 F. Supp.2d at 1273-75.

IT IS THEREFORE ORDERED that this case is remanded to the Court of Common Pleas, County of Charleston, State of South Carolina. A certified copy of this Order shall be sent to the Court of Common Pleas, County of Charleston, along with a copy of the docket and all of the documents that have been filed in this case.

IT IS FURTHER ORDERED that the Office of the Clerk of Court shall not immediately certify this Order to the Court of Common Pleas, County of Charleston, but shall withhold such certification until the time for an appeal pursuant to 28 U.S.C. § 636(b)(1)(A) and Fed. R. Civ. P. 72(a) has passed. If any party in this case seeks to appeal this Order within the ten-day period permitted, the Office of the Clerk of Court shall forward this case file and appeal(s) to a United States District Judge for a final disposition. *See* 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a). If none of the parties files an appeal of this Order to a District Judge within ten days, the Office of

the Clerk of Court shall then certify this Order to the Court of Common Pleas, County of Charleston, South Carolina.

/s/
Robert S. Carr
United States Magistrate Judge

June 5, 2008
Charleston, South Carolina

COMPLAINT BY SYLVIA MCRAE AGAINST
(1) ROBERT M. KUNES AND ANDREW CHANDLER
AND
(2) STEPHEN SLOTCHIVER

ACTIONS COMPLAINED OF: Misrepresentations to the Court

(1) Messrs. Kunes and Chandler, at a hearing on April 14, 2008 at 12:00 p.m. before the South Carolina Court of Common Pleas in the matter of C/A No. 05-5018, made two misrepresentations to the Court. The first was an assertion that the case had been brought before the court *pro se*. The second was that they had filed a motion to dismiss in the action. Neither statement was true. The judge stated that a motion to dismiss was not in the file and asked to see it. Mr. Kunes approached the bench with his hand over a portion of the file. The hearing was dismissed by the judge.

This action on the part of Robert Kunes and Andrew Chandler was a "bait and switch" of cases. There was a case brought *pro se* and there was a case in which they had filed a motion to dismiss, but it was not this case. That case (C/A No. 07-2527) was heard before the court a month later (on May 21, 2008) and the attorneys easily prevailed.

There was no need to attempt to deceive the court. The attorneys knew which case was before the Court; a motion for continuance had been filed and served upon them on April 2, 2008. (copy attached.) They opposed the motion for continuance

and that opposition caused time and travel expense for the parties. Their actions embarrassed the Court and its personnel. Robert Kunes and Andrew Chandler did not exhibit professional responsibility in this matter.

(2) Stephen Slotchiver is a party in C/A No. 07-2527. He has been nominated to administer the estate and his nomination is part of an appeal that is going forward in federal court. As a courtesy, he has been notified of all actions related to this matter since his nomination. He is qualified to appear before the U. S. Supreme Court and should be aware that a petition for rehearing is permissible, and in this case, has been sought. However, he, similarly to Robert Kunes and Andrew Chandler, has switched the cases. The U. S. Supreme Court action did not involve him; that action related to a spendthrift trust that was part of the estate. However, he used this case to attempt to circumvent the appeal of his nomination and deceive the probate court as to his status. (letter attached.) He has not exhibited professional responsibility, nor has he shown legal acumen since the estate accountings have regularly been filed with the probate court and are a matter of public record.

SUMMARY: There should be sanctions, censure or, at the very least, a CLE course on ethics required for this kind of legal behavior. Attorneys should not be held to a lower standard than plaintiffs/defendants or witnesses who have to swear to honesty before courts.

November 12, 2008 Sylvia E. McRae

STATUTES INVOLVED

28 U.S.C. 1331
Federal Question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. 1332(a)(1)
Diversity of citizenship; amount in controversy; costs
(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—

(1) citizens of different States;

28 U.S.C. 1340
Internal revenue; customs duties

The district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue, or revenue from imports or tonnage except matters within the jurisdiction of the Court of International Trade.

14th Amendment to the United States Constitution
Section 1—
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of

the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U. S. SUPREME COURT RULE 10

Part III. Jurisdiction on Writ of Certiorari
Rule 10. Considerations Governing Review on Certiorari

Review on a writ of certiorari is not a matter or right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure of a lower court, as to call for an exercise of this Court's supervisory power;

UNIFORM PROBATE CODE 3-720:

If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorneys' fees incurred.

18 U.S.C. § 1506. Theft or alteration of record or process; false bail

Whoever feloniously steals, takes away, alters, falsifies, or otherwise avoids any record, writ, process, or other proceeding, in any court of the United States, whereby any judgment is reversed, made void, or does not take effect; or

Whoever acknowledges, or procures to be acknowledged in any such court, any recognizance, bail or judgment, in the name of any other person not privy or consenting to the same--

Shall be fined under this title or imprisoned not more than five years, or both.